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*NOT ADMITTED TO THE NEW YORK BAR

August 18, 2017

By ECF

The Honorable Cathy Seibel
United States District Judge
The Honorable Charles L. Bricant Jr.
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

MEMO ENDORSED

International Business Machines Corporation v. Jeff S. Smith, No. 17 Civ. 5808

Dear Judge Seibel:

We represent Plaintiff International Business Machines Corporation ("IBM"). This letter is submitted on behalf of both IBM and, with the consent of his counsel, Defendant Jeff Smith, in response to the question from Chambers as to whether the parties would consent to consolidating the preliminary injunction hearing with trial on the merits pursuant to Federal Rule of Civil Procedure 65(a)(2). After carefully considering this issue, the parties respectfully do not consent to consolidation. We can provide additional information as to the basis for that decision at the Court's request.

In addition, in anticipation of Monday's hearing, the parties respectfully request that the Court permit each side brief opening statements of no more than ten minutes.

PAUL, WEISS, RIKIND, WHARTON & GARRISON LLP

Honorable Cathy Seibel

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Respectfully submitted,

Robert Atkins

Robert A. Atkins

cc (by ECF): Counsel of Record

Application granted. Counsel for each side may present opening statements of no more than ten minutes.

Application Granted / ~~Denied~~
So Ordered.

Cathy Seibel

Cathy Seibel, U.S.D.J.

Dated: 8/18/17